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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/079,264

02/19/2002

Henry Palladino

650-002

6109

7590

01/11/2005

Ward & Olivo  
708 Third Avenue  
New York, NY 10017

EXAMINER

STAFIRA, MICHAEL PATRICK

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/079,264

Applicant(s)

PALLADINO ET AL.

Examiner

Michael P. Stafira

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2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-64 is/are pending in the application.
- 4a) Of the above claim(s) 31-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 48-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. The amendment filed October 21, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: In claim 48 in line 3 the “**20** standard curve” is new matter which has been entered in the claim and is not disclosed in the specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 48, 50 are rejected under 35 U.S.C. 102(e) as being anticipated by Manian et al. ('745).

#### **Claim 48**

Manian et al. ('745) discloses that the glass is coated with a different concentration and are linearly from another in a standard curve as shown in Col. 9, lines 28-57, which discloses adding a layer to the glass which is of a different concentration from one another and both

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produce a index of refraction different from one another which produce a linearly standard curve from the other, and therefore Manian et al. ('745) reads on the claimed invention. The reference of Manian et al. ('745) further discloses the use of a microplate reader, which therefore has an optical density (Col. 9, lines 28-61). The examiner further does not give the limitation after "can be" any patentable weight since it does provide a positive limitation and only requires the ability to so perform, further the prior art structure is capable of performing the intended use and therefore reads on the claimed limitations. Also "20" standard curve is not provided in the specification and therefore that part of the limitation carries no weight.

**Claim 50**

Manian et al. ('745) further discloses the coating is a known spectroscopic compound (Col. 9, lines 45-56).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 49, 51-57, 58-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manian et al. ('745).

**Claim 49 & 60**

Manian et al. ('745) discloses the claimed invention except for the coated optical quartz. It would have been obvious to one having ordinary skill in the art at the time the invention was

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made to combine Manian et al. ('745) with the optical quartz since it was well known in the art that optical quartz provides a clearer optical medium, therefore allow it to be more sensitive to different light measurements.

**Claims 51-57**

Manian et al. ('745) discloses the claimed invention except for the use with fluorescent, absorbent, ultra violet, visible, infra-red, laser, luminescence spectroscopy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Manian et al. ('745) with fluorescent, absorbent, ultra violet, visible, infra-red, laser, luminescence spectroscopy since it was well known in the art that using a coated material with different spectroscopy increases the accuracy in a measurement, therefore provides improved increasing the sensitivity of the measurement.

**Claims 58-59, 61-64**

Claims 58-64 are construed as a product-by-process claim and the reference of Manian et al. ('745) discloses using different layers and using a vacuum evaporation deposition for coating the layers on optical glass. Examiner is taking official notice that it is well known in the art that using vacuum evaporation deposition on layers are going to be baked at various temperatures with any array of types of material. It is further known that the layer disclosed in Manian et al. ('745) will have a known absorption wavelength and that different layers can be similar to one another.

***Response to Arguments***

5. Applicant's arguments filed 10/21/2004 have been fully considered but they are not persuasive. Applicant argues that the new claims are very different from the prior art. Examiner argues that the reference of Manian et al. ('745) discloses the claimed limitations as cited in the rejection above.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Stafira whose telephone number is 571-272-2430. The examiner can normally be reached on 4/10 Schedule Mon.-Thurs..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Toatley can be reached on 571-272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael P. Stafira  
Primary Examiner  
Art Unit 2877

January 4, 2005